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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 61**

**[WC Docket Nos. 18-276, 17-308; FCC No. 19-107; FR ID 16252]**

#### **Reform of Certain Tariff Rules**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission amends its tariff publication rules to allow carriers to cross-reference their own tariffs and the tariffs of their affiliates, and to eliminate the short form tariff review plan filed by price cap incumbent local exchange carriers 90 days before the effective date of their annual access tariff filings. These changes will bring the Commission's tariff publication rules in line with the reality of the increased ease of access to tariff filings, and will reduce the regulatory burdens on filers and the Commission's own tariff review staff.

**DATES:** The amendments set forth in this Report and Order will become effective

**[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW,  
Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Robin Cohn, Wireline Competition  
Bureau, Pricing Policy Division at 202-418-1540 or via e-mail at [Robin.Cohn@fcc.gov](mailto:Robin.Cohn@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order released October 30, 2019. A full-text copy can be obtained at the following Internet Address: <https://docs.fcc.gov/public/attachments/FCC-19-107A1.pdf>.

## **BACKGROUND**

1. Many of the Commission’s rules governing tariff filings were adopted when paper tariffs were filed at the Commission and interested parties had to visit the Commission to review physical copies of those filings. Not surprisingly, technological advances that allow carriers and interested parties to submit and view information electronically have obviated the need for certain longstanding tariff rules that were predicated on the need for paper filings and protracted review periods. Last year, the Commission proposed to amend two such sets of rules—those that prohibit a carrier from cross-referencing its tariffs and those of its affiliates, and the rule that requires price cap local exchange carriers (LECs) to file short form tariff review plans well in advance of their annual tariff filings.

2. *Cross-referencing.* When the Commission’s cross-referencing rules were adopted more than 75 years ago, tariffs were often quite voluminous and were filed in hard copy, making it cumbersome to obtain and follow a cross-reference from one tariff to another tariff. To ensure that someone reviewing a paper copy of a tariff would have ready access to all of the terms of the tariff, the Commission adopted § 61.74, which, with certain exceptions, prohibits one tariff from cross-referencing another tariff, and § 61.54, which also has been interpreted as prohibiting cross-referencing between tariffs.

3. Today, by contrast, carriers are required to file tariffs electronically using the Electronic Tariff Filing System (ETFS), and it only takes “a few seconds and a few

clicks” to find a cross-referenced tariff. As a result, interested parties can now access tariffs through the ETFS via an Internet connection anywhere and electronically review and search the tariffs they are looking for.

4. The Commission’s current rules allow carriers to seek special permission to cross-reference their own tariffs and those of their affiliates, and carriers do so when, for example, they offer discount plans that cross different operating territories. The Wireline Competition Bureau (Bureau) has routinely granted requests for special permission to allow a carrier to cross-reference its own tariffs and those of its affiliates. In the notice of proposed rulemaking (*NPRM*) (83 FR 58510, Nov. 20, 2018), the Commission proposed to amend the rules to allow a carrier’s tariffs to refer to its own tariffs and those of its affiliates, and provided an interim waiver of § 61.74(a) to all carriers to allow carriers’ tariffs to reference their other tariffs, and those of their affiliates, pending resolution of the issues addressed in the *NPRM*.

5. *Short form tariff review plans.* Prior to 1997, annual interstate access tariffs were filed 90 days before the effective date of such tariffs, thereby allowing a significant amount of time for the Commission and interested parties to review the filings and associated cost support. In 1997, when the Commission modified its rules to permit price cap carriers to file tariffs on either 7 days’ notice (for rate reductions) or 15 days’ notice (for rate increases), it also adopted a requirement that price cap carriers submit supporting information, without rate data, 90 days prior to the annual access tariff filing effective date. This filing, known as the “short form tariff review plan,” consists of a standardized spreadsheet showing data regarding exogenous cost adjustments that price cap carriers seek to make to their price cap indices. Exogenous cost adjustments are

made, for example, to the following cost input categories: (1) regulatory fees; (2) Telecommunications Relay Services (TRS) expenses; (3) excess deferred taxes; and (4) North American Numbering Plan Administration (NANPA) expenses.

6. In the years following adoption of the short form tariff review plan filing requirement, the Bureau often granted waivers of the filing deadline and of the requirement to provide certain data in advance of the annual access tariff filing. In 2014, at USTelecom’s request, the Bureau granted a waiver that reduced the 90-day filing deadline for the short form tariff review plan to approximately 45 days before the annual access tariff effective date.

7. In 2017, the Bureau waived the short form tariff review plan filing requirement in its entirety, finding that the “factors needed to calculate three of the most common exogenous cost adjustments—regulatory fees, TRS fees, and NANPA expenses—will not be available prior to the short form filing deadline,” so the short form tariff review plan would be of little value to the Commission. The Bureau found multiple reasons to waive the short form tariff review plan requirement again in 2018 and 2019, including that: (1) it was unlikely that the necessary information would be available by the required filing date; and (2) exogenous cost data contained in the short form tariff review plan would be included with the information filed directly prior to the annual filing effective date (assuming the availability of such data), at which time the information could be reviewed by the Commission and interested parties.

8. In the *NPRM*, the Commission recognized that the value of the short form tariff review plan has declined because the complexity and number of interstate access tariff filings has decreased over the last decade as the scope of services subject to price

cap regulation has narrowed. In light of the Commission's experience that waiving the short form tariff review plan requirement had not negatively affected the ability of interested parties and staff to review tariffs in a timely fashion, the Commission proposed to eliminate it as unnecessary and unduly burdensome.

## **I. DISCUSSION**

9. The Commission received no opposition to the proposals set forth in the *NPRM*. Instead, commenters all agree that, in their experience, the ease of making and reviewing electronic tariff filings obviates the need for the prohibition on carriers' cross-referencing their own or their affiliates' tariffs and the need for the short form tariff review plan. The Commission therefore amends its rules to reduce unnecessary filing burdens and to allow stakeholders to benefit from current technology. (AT&T filed a Motion for Acceptance of Late-Filed Comments. The Commission treats AT&T's filing as *Ex Parte* Comments, and dismisses AT&T's Motion as moot.)

### **A. Updating and Amending Tariff Cross-Referencing Rules**

10. First, the Commission amends its tariffing rules to allow carriers to cross-reference their own and their affiliates' tariffs. Comments in the record unanimously support amending § 61.74 of the Commission's rules to permit carriers to cross-reference their own and their affiliates' tariff filings. The Commission agrees with the commenters that this modification is justified because the prohibition on a carrier's tariff cross-referencing that carrier's tariffs and those of its affiliates no longer serves a functional purpose, in light of the ease with which the public can now access and search tariffs.

11. Moreover, as commenters explain, the current obligation to seek and receive special permission to cross-reference a carrier's own tariffs imposes unnecessary

costs on the carriers that file those requests and on the Commission staff that consider and act on those requests. The need to request special permission also harms competition by “impinging the carriers’ ability to quickly respond to customers’ demands,” and by forcing carriers to “telegraph a planned tariff filing.” Furthermore, there is no record of any negative consequences arising from previous grants of special permission.

12. The Commission therefore amends § 61.74 as proposed in the *NPRM* to expressly allow a carrier to reference other tariffs issued by the carrier or any of its affiliates. The new § 61.74(b) states: “Tariff publications filed by a carrier may reference other tariff publications filed by that carrier or its affiliates.” To further effectuate the Commission’s decision to allow carriers to cross-reference their own and their affiliates’ tariffs, the Commission also amends § 61.54 of its rules, which applies to the composition of tariffs, and has been interpreted as prohibiting a carrier’s tariff from referring to rates in other tariffs. To effectuate this decision to allow carriers to cross-reference their own and their affiliates’ tariffs, the Commission also amends § 61.54, which applies to the composition of tariffs and has been interpreted as prohibiting a carrier’s tariff from referring to rates in other tariffs. Paragraph (k) is added, which specifies that “[n]otwithstanding any other provisions in [that] section, tariff publications filed by a carrier may reference other tariff publications filed by that carrier or its affiliates.”

13. The rationale for amending § 61.54 is identical to the rationale for amending § 61.74: There are clear benefits, and no drawbacks, to allowing a carrier’s tariff to refer to other tariffs filed by that carrier and its affiliates. The Commission’s amendment to § 61.54 is necessary to ensure consistency between the rules that govern

tariff filings. Given that all parties to this proceeding that commented on the cross-referencing issue support the Commission's decision to allow carriers to cross-reference their own and their affiliates' tariffs, it follows that the record supports the Commission's decision to amend § 61.54 to achieve the desired result.

**B. Eliminating Advanced Filing of Materials that Support Interstate Access Tariffs for Price Cap LECs**

14. As proposed in the *NPRM*, and supported by the record, the Commission also eliminates the requirement that price cap LECs file short form tariff review plans 90 days before their annual interstate access tariff filings are effective. Consistent with the view of all parties that commented on this issue, the Commission finds that the filing of short form tariff review plans is no longer necessary and is unduly burdensome.

15. As Verizon explains, the decreased complexity of the annual filings obviates the need for early notice of the information contained in the short form tariff review plan. AT&T also points out that, even when the required data are available by the filing deadline, some of the information may later change, forcing carriers to redo their calculations before they submit their annual access tariff filings. Both AT&T and Frontier argue that the lack of data and/or use of temporary or preliminary factors render the short form tariff review plan of little practical value.

16. Notably, commenters agree that there have been no adverse consequences from the suspension of the requirement in recent years to prepare and file a short form tariff review plan. As Verizon, for example, explains, the waivers of the entire filing requirement "did not impede parties' ability to review the annual filings." Frontier agrees that there is no evidence that the Bureau's previous waivers of the filing requirement caused any harm.

17. Although the short form tariff review plan filing serves little, if any, useful purpose, it requires effort from the filing carriers. Parties estimate that the time required to prepare and file the short form tariff review plan can range from 40 to 160 hours. Also, as CenturyLink explains, the timing of the short form tariff review plan is inconvenient, requiring that carriers and the Commission expend resources completing and reviewing the short form tariff review plan at a time “when the larger [a]nnual [f]iling needs the greater attention.” Thus, the current rule requiring price cap carriers to file short form tariff review plans is burdensome and provides little benefit, if any, especially given that the remaining annual filing notice requirements “will provide adequate time for the Commission and the industry to review carrier tariff filings.” As Frontier aptly explains, eliminating the short form tariff review plan “will free up valuable carrier resources with no discernable downside for Commission staff.”

**C. Effective Date and Sunset of Interim Waiver of the Prohibition on Referencing Other Tariffs**

18. Because both the prohibition on a carrier cross-referencing its own tariffs and those of its affiliates and the short form tariff review plan requirement no longer serve any useful purpose, the Commission sees no reason to delay the effective date of the rule changes. In the *NPRM*, the Commission proposed that the rule changes would take effect 30 days after **Federal Register** publication of a summary of this Report and Order. No commenters opposed this proposal, which the Commission now adopts.

19. Finally, the interim waiver the Commission granted to all carriers of the prohibition on cross-referencing their own tariffs and those of their affiliates will end 30 days after **Federal Register** publication of a summary of this Report and Order, when the revised rules become effective.

## II. PROCEDURAL ISSUES

20. *Paperwork Reduction Act.* This document eliminates certain information collection requirements but does not contain any new or modified information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

21. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

22. The Commission included an Initial Regulatory Flexibility Certification in the NPRM, and received no comments addressing this issue.

23. In this Report and Order, the Commission amends two of its tariff rules by adding §§ 61.54(k) and 61.74(b), and eliminates one tariff rule, § 61.49(k), to minimize burdens associated with filing tariffs, as part of the Commission’s efforts to

reduce unnecessary regulations that no longer serve the public interest. The addition of §§ 61.54(k) and 61.74(b) is procedural in nature, and the impact is minor. These revisions impact large and small telephone companies. The elimination of § 61.49(k) impacts only price cap LECs for services that continue to be subject to price cap regulation, and any impact of this rule change is minor. Price cap LECs are some of the largest telephone companies. Therefore, the Commission certifies that the rule amendments will not have a significant economic impact on a substantial number of small entities.

24. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

25. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

### **III. ORDERING CLAUSES**

26. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), and 201-203 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)-(j), 201-203, this *Report and Order is adopted*.

27. *It is further ordered* that this Report and Order *shall be effective* thirty (30) days after publication of a summary in the **Federal Register**.

28. *It is further ordered* that part 61 of the Commission's rules, 47 CFR part 61, *is amended* as set forth in the Final Rules, and such rule amendments *shall be effective* thirty (30) days after publication of a summary of the *Report and Order* in the **Federal Register**.

29. *It is further ordered* that the interim waiver of the prohibition on a carrier's tariff referencing the carrier's other tariff publications and tariffs of its affiliates, as adopted in the *NPRM*, *will end* thirty (30) days after a summary of this *Report and Order* is published in the **Federal Register**.

30. *It is further ordered* that the Motion for Acceptance of Late-Filed Comments filed by AT&T *is dismissed as moot*.

31. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements,  
Telephones.

## **Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 61 as follows:

## **PART 61—TARIFFS**

1. The authority citation for part 61 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201-205, 403, unless otherwise noted.

### **§ 61.49 [Amended]**

2. Amend § 61.49 by removing and reserving paragraph (k).
3. Amend § 61.54 by adding paragraph (k) to read as follows:

### **§ 61.54 Composition of tariffs.**

\* \* \* \* \*

(k) *References to other tariffs.* Notwithstanding any other provisions in this section, tariff publications filed by a carrier may reference other tariff publications filed by that carrier or its affiliates.

4. Amend § 61.74 by redesignating paragraphs (b) through (e) as paragraphs (c) through (f) and adding new paragraph (b) to read as follows:

**§ 61.74 References to other instruments.**

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(b) Tariff publications filed by a carrier may reference other tariff publications filed by that carrier or its affiliates.

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[FR Doc. 2019-25570 Filed: 11/25/2019 8:45 am; Publication Date: 11/26/2019]